

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 348

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Stephen H. Fischmann

AN ACT

RELATING TO PUBLIC FACILITIES; EXTENDING THE MAXIMUM TERM FOR  
CONTRACTS PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND  
WATER CONSERVATION ACT; CLARIFYING TYPES OF RENEWABLE ENERGY  
SYSTEMS AND SOURCES OF FUNDING AUTHORIZED BY THE PUBLIC  
FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; MAKING  
AN APPROPRIATION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
SECTION OF LAW IN LAWS 2001.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-23-2 NMSA 1978 (being Laws 1993,  
Chapter 231, Section 2, as amended) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Facility  
Energy Efficiency and Water Conservation Act:

A. "conservation-related cost savings" means cost  
savings, other than utility cost savings, in the operating

underscoring = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 budget of a governmental unit that are a direct result of  
2 energy or water conservation measures implemented pursuant to a  
3 guaranteed utility savings contract;

4 B. "energy conservation measure" means a training  
5 program or a modification to a facility, including buildings,  
6 systems or vehicles, that is designed to reduce energy  
7 consumption or conservation-related operating costs and may  
8 include:

9 (1) insulation of the building structure or  
10 systems within the building;

11 (2) storm windows or doors, caulking or  
12 weatherstripping, multiglazed windows or doors, heat absorbing  
13 or heat reflective glazed and coated window or door systems,  
14 additional glazing, reductions in glass area or other window  
15 and door system modifications that reduce energy consumption;

16 (3) automated or computerized energy control  
17 systems;

18 (4) heating, ventilating or air conditioning  
19 system modifications or replacements;

20 (5) replacement or modification of lighting  
21 fixtures to increase the energy efficiency of the lighting  
22 system without increasing the overall illumination of a  
23 facility, unless an increase in illumination is necessary to  
24 conform to the applicable state or local building code or  
25 nationally accepted standards for the lighting system after the

.175009.3

underscored material = new  
[bracketed material] = delete

1 proposed modifications are made;

2 (6) energy recovery systems;

3 (7) solar energy generating or heating and  
4 cooling systems or other renewable energy systems;

5 (8) cogeneration or combined heat and power  
6 systems that produce steam, chilled water or forms of energy  
7 such as heat, as well as electricity, for use primarily within  
8 a building or complex of buildings;

9 (9) energy conservation measures that provide  
10 long-term operating cost reductions;

11 (10) maintenance and operation management  
12 systems that provide long-term operating cost reductions;

13 (11) traffic control systems; or

14 (12) alternative fuel options or accessories  
15 for vehicles;

16 C. "governmental unit" means an agency, political  
17 subdivision, institution or instrumentality of the state,  
18 including two- and four-year institutions of higher education,  
19 a municipality, a county or a school district;

20 D. "guaranteed utility savings contract" means a  
21 contract for the evaluation and recommendation of energy or  
22 water conservation measures and for the implementation of one  
23 or more of those measures, and which contract provides that all  
24 payments, except obligations on termination of the contract  
25 before its expiration, are to be made over time and the savings

.175009.3

underscored material = new  
[bracketed material] = delete

1 are guaranteed to the extent necessary to make the payments for  
2 the conservation measures;

3 E. "qualified provider" means a person experienced  
4 in the design, implementation and installation of energy or  
5 water conservation measures and who meets the experience  
6 qualifications developed by the energy, minerals and natural  
7 resources department for energy conservation measures or the  
8 office of the state engineer for water conservation measures;

9 F. "utility cost savings" means the amounts saved  
10 by a governmental unit in the purchase of energy or water that  
11 are a direct result of energy or water conservation measures  
12 implemented pursuant to a guaranteed utility savings contract;  
13 and

14 G. "water conservation measures" means a training  
15 program, change in maintenance practices or facility or  
16 landscape alteration designed to reduce water consumption or  
17 conservation-related operating costs."

18 Section 2. Section 6-23-3 NMSA 1978 (being Laws 1993,  
19 Chapter 231, Section 3, as amended) is amended to read:

20 "6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS  
21 AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

22 A. A governmental unit may enter into a guaranteed  
23 utility savings contract with a qualified provider to reduce  
24 energy, water or conservation-related operating costs if, after  
25 review of the utility efficiency proposal from the qualified

.175009.3

underscored material = new  
[bracketed material] = delete

1 provider, the governmental unit finds that:

2 (1) the amount the governmental unit would  
3 spend on the energy or water conservation measures recommended  
4 in the proposal is not likely to exceed the amount of utility  
5 cost savings and conservation-related cost savings over [~~ten~~]  
6 twenty-five years from the date of installation if the  
7 recommendations in the proposal were followed; and

8 (2) the qualified provider can provide a  
9 written guarantee that the utility cost savings and  
10 conservation-related cost savings will meet or exceed the costs  
11 of the conservation measures.

12 B. A guaranteed utility savings contract shall  
13 include:

14 (1) a written guarantee from the qualified  
15 provider that annual utility cost savings and conservation-  
16 related cost savings shall meet or exceed the cost of the  
17 conservation measures; and

18 (2) a requirement that the qualified provider  
19 maintain a direct financial relationship with the governmental  
20 unit, irrespective of the source of financing for the energy or  
21 water conservation measures to be implemented.

22 C. A guaranteed utility savings contract may extend  
23 beyond the fiscal year in which it becomes effective and may  
24 provide for payments over a period of time not to exceed [~~ten~~]  
25 twenty-five years; provided, however, only utility cost

.175009.3

underscored material = new  
[bracketed material] = delete

1 savings, conservation-related cost savings and special funds  
2 authorized pursuant to the Public Facility Energy Efficiency  
3 and Water Conservation Act or other law shall be pledged for  
4 the payments.

5 D. A governmental unit may enter into an  
6 installment payment contract or lease-purchase agreement for  
7 the purchase and installation of energy or water conservation  
8 measures pursuant to a guaranteed utility savings contract, but  
9 only in accordance with the provisions of the Public Facility  
10 Energy Efficiency and Water Conservation Act and Section  
11 13-1-150 NMSA 1978.

12 E. A governmental unit may enter into a guaranteed  
13 utility savings contract pursuant to Section 13-1-129 NMSA 1978  
14 in accordance with the provisions of the Public Facility Energy  
15 Efficiency and Water Conservation Act."

16 Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997,  
17 Chapter 42, Section 7, as amended) is amended to read:

18 "6-23-6.1. REPORTING AND RETENTION OF UTILITY COST  
19 SAVINGS FOR STATE AGENCIES.--

20 A. A state agency entering into a guaranteed  
21 utility savings contract with a qualified provider shall, no  
22 later than thirty days after the close of the fiscal year,  
23 furnish the energy, minerals and natural resources department a  
24 consumption and savings report, in a format established jointly  
25 by that department and the department of finance and

.175009.3

underscored material = new  
[bracketed material] = delete

1 administration, [~~which~~] that estimates any cost savings  
2 resulting from the implementation of the guaranteed utility  
3 savings contract during the fiscal year. The report shall  
4 include:

5 (1) the name or description of each facility  
6 or major utility system covered by the report;

7 (2) utility account numbers;

8 (3) a record of monthly consumption of water  
9 or energy by fuel type; and

10 (4) a record of monthly per-unit cost of water  
11 or energy by fuel type.

12 B. If the consumption and savings report for a  
13 state agency shows a utility cost savings or conservation-  
14 related cost savings at the end of the fiscal year that  
15 resulted from implementation of a guaranteed utility savings  
16 contract and causes an unexpended and unencumbered balance in  
17 the agency's utility line item, and if the utility cost savings  
18 or conservation-related cost savings has not been pledged for  
19 payments pursuant to the guaranteed utility savings contract,  
20 the dollar amount of the utility cost savings or conservation-  
21 related cost savings shall be carried over as a reserved  
22 designated fund balance to the subsequent fiscal year.

23 C. Beginning the year after the energy or water  
24 conservation measures are implemented, and until any  
25 alternative financing for a guaranteed utility savings contract

.175009.3

underscored material = new  
[bracketed material] = delete

1 is repaid, or for a period of no more than [~~ten~~] twenty-five  
2 years, whichever is less, all utility budgets and  
3 appropriations for the state agency shall be based on:

4 (1) the energy or water consumption levels, or  
5 both, before the energy or water conservation measures were  
6 implemented;

7 (2) the same allowance for escalation or  
8 decrease of utility costs given state agencies that did not  
9 participate in a guaranteed utility savings contract; and

10 (3) any adjustments for acquisitions,  
11 expansions, sale or disposition of state agency facilities.

12 D. At the end of the repayment period for the  
13 guaranteed utility savings contract, or [~~ten~~] twenty-five  
14 years, whichever is less, new budgets or appropriations for  
15 utilities shall again be based upon actual utility consumption.

16 E. Upon carryover of the dollar amount of utility  
17 cost savings or conservation-related cost savings as a reserved  
18 designated fund balance to the subsequent fiscal year, state  
19 agencies may submit a budget adjustment request to use those  
20 funds for the following purposes:

21 (1) up to one hundred percent of the funds may  
22 be used for additional energy or water conservation measures or  
23 for payment of guaranteed utility savings contracts; and

24 (2) after encumbrances for additional energy  
25 or water conservation measures or for payment of guaranteed

.175009.3

underscored material = new  
[bracketed material] = delete

1 utility savings contracts have been made, up to fifty percent  
2 of the remaining funds may be used for purposes consistent with  
3 the duties and responsibilities assigned to the state agency,  
4 while the remaining funds shall revert to the appropriate fund.

5 F. For the purposes of this section, "state agency"  
6 means an agency, institution or instrumentality of the state of  
7 New Mexico. "State agency" does not include a municipality,  
8 county or school district."

9 Section 4. Section 6-23-10 NMSA 1978 (being Laws 1993,  
10 Chapter 231, Section 10, as amended) is amended to read:

11 "6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF  
12 CERTAIN REVENUES AUTHORIZED.--~~[A.]~~ Resulting utility cost  
13 savings and conservation-related cost savings, income from  
14 lands granted for the use of certain institutions and public  
15 buildings and deposited in income funds for such institutions  
16 and buildings pursuant to Section 19-1-17 NMSA 1978 ~~[and]~~ or  
17 special funds of institutions may be appropriated and pledged  
18 for payments pursuant to ~~[any]~~ a guaranteed utility savings  
19 contract or related lease-purchase agreement or installment  
20 payment contract pursuant to the Public Facility Energy  
21 Efficiency and Water Conservation Act. ~~[Any money so]~~ Money  
22 appropriated for that purpose shall be deposited in a special  
23 fund or account of the institution or fund and ~~[except as~~  
24 ~~provided in Subsection B of this section]~~ that revenue and no  
25 other revenue shall be pledged for payments pursuant to the

.175009.3

underscored material = new  
[bracketed material] = delete

1 Public Facility Energy Efficiency and Water Conservation Act.

2 ~~[B. In the absence of an appropriation for payments~~  
3 ~~pursuant to Subsection A of this section, when entering into a~~  
4 ~~guaranteed utility savings contract, an institution may pledge~~  
5 ~~resulting utility cost savings or conservation-related cost~~  
6 ~~savings for payments to be made under the contract, provided~~  
7 ~~that the utility cost savings or conservation-related cost~~  
8 ~~savings are subject to appropriation by the legislature.]"~~

9 Section 5. Section 13-1-150 NMSA 1978 (being Laws 1984,  
10 Chapter 65, Section 123, as amended by Laws 2001, Chapter 247,  
11 Section 11 and by Laws 2001, Chapter 270, Section 1) is amended  
12 to read:

13 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

14 A. A multi-term contract for items of tangible  
15 personal property, construction or services except for  
16 professional services, in an amount under twenty-five thousand  
17 dollars (\$25,000), may be entered into for any period of time  
18 deemed to be in the best interests of the state agency or a  
19 local public body not to exceed four years; provided that the  
20 term of the contract and conditions of renewal or extension, if  
21 any, are included in the specifications and funds are available  
22 for the first fiscal period at the time of contracting. If the  
23 amount of the contract is twenty-five thousand dollars  
24 (\$25,000) or more, the term shall not exceed eight years,  
25 including all extensions and renewals, except that for [any

.175009.3

underscoring material = new  
[bracketed material] = delete

1 ~~such~~] a contract entered into pursuant to the Public Facility  
2 Energy Efficiency and Water Conservation Act, the term shall  
3 not exceed [~~ten~~] twenty-five years, including all extensions  
4 and renewals. Payment and performance obligations for  
5 succeeding fiscal periods shall be subject to the availability  
6 and appropriation of funds therefor.

7 B. A contract for professional services may not  
8 exceed four years, including all extensions and renewals,  
9 except for the following:

10 (1) services required to support or operate  
11 federally certified medicaid, financial assistance and child  
12 support enforcement management information or payment systems;

13 (2) services to design, develop or implement  
14 the taxation and revenue information management systems project  
15 authorized by Laws 1997, Chapter 125;

16 (3) a multi-term contract for the services of  
17 trustees, escrow agents, registrars, paying agents, letter of  
18 credit issuers and other forms of credit enhancement and other  
19 similar services, excluding bond attorneys, underwriters and  
20 financial advisors with regard to the issuance, sale and  
21 delivery of public securities, may be for the life of the  
22 securities or as long as the securities remain outstanding; and

23 (4) services relating to the implementation,  
24 operation and administration of the Education Trust Act."

25 Section 6. EFFECTIVE DATE.--The effective date of the

.175009.3

underscored material = new  
[bracketed material] = delete

1 provisions of this act is July 1, 2009.

2 - 12 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

.175009.3